

EXHIBIT A

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September 12, 2014

VIA EMAIL

Paul J. Nathanson
Assistant United States Attorney
Eastern District of Virginia
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, Virginia 22314

Re: *United States v. Amir Bajoghli*, No. 1:14-CR-278-GBL (E.D. Va.)

Dear Paul:

I am writing to object to the Department of Justice (DOJ) sending victim impact letters to key witnesses six weeks before trial. (*See* Attachment A.) Sending such letters to these witnesses impairs Dr. Bajoghli's ability to receive a fair trial. Until such time as we can raise this matter with the Court, we would ask that you immediately cease sending such letters to witnesses that are likely to be called at trial. Further, we would like a list and copies of all letters that have been previously sent.

You sought and received an indictment of Dr. Bajoghli where the charges include 53 counts of health care fraud and the total amount paid on those counts is roughly \$31,000. The alleged "victims" of these charges are the payors including the Centers for Medicare and Medicaid Services (CMS), Tricare, and Anthem.

We are not aware of a single patient of our client ever asserting that they were a "victim" of any crime. Law enforcement has known for months that many of the patients you selected for inclusion in the indictment and to receive these letters (1) had previously been diagnosed by other physicians with skin cancers, (2) had come to Dr. Bajoghli seeking removal or treatment of bleeding, sore, and visibly abnormal skin lesions, typically upon the referral of other physicians, (3) had received diagnoses and treatment by Dr. Bajoghli that he believed were medically appropriate, and, most importantly, (4) have testimony to offer that would be essential evidence at trial.

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Your letters inappropriately label key trial witnesses, most of whom are elderly, as “victims.” Sending such letters on DOJ letterhead only weeks before trial appears calculated to harm our client’s ability to receive a fair trial. Further, law enforcement’s inaccurate characterization of medical conditions when interviewing patients, such as by telling them that they “do not have cancer” or by implying that they do not, jeopardizes the health and well-being of people who need treatment. Characterizing these patients as “victims” not only hurts our ability to receive a fair trial, but could cost these people their lives if they believe your false characterizations.

We understand that as an employee of the U.S. Department of Justice, it is your responsibility to comply with the Crime Victims’ Rights Act, 18 U.S.C. § 3771 and Victims’ Rights and Restitution Act, 42 U.S.C. § 10607. However, construing these patients as “victims” of alleged healthcare fraud is a “willful[] and wanton[]” distortion of the Act. *Cf.* 18 U.S.C. § 3771(f)(2)(C). DOJ’s letters to them are tantamount to impeding Dr. Bajoghli’s fair access to witnesses.

“[T]he term ‘crime victim’ means a person directly and proximately harmed as a result of the commission of a Federal offense” 18 U.S.C. § 3771(e); *see also* 42 U.S.C. § 10607(e)(2) (“the term ‘victim’ means a person that has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime”). Regardless of whether you agree that Dr. Bajoghli provided excellent medical care to his patients, any alleged “victims” of *healthcare fraud* would necessarily be the healthcare payors who were allegedly defrauded. *See, e.g., United States v. Weinberger*, No. 2:06-CR-230, 2011 WL 445815, at *1 n.2 (N.D. Ind. Feb. 4, 2011) (considering letter submitted during sentencing of defendant convicted under 18 U.S.C. § 1347 and explaining: “Although many people may have been harmed by medical malpractice committed by Dr. Weinberger, the victims ‘directly and proximately harmed’ by the health care fraud alleged in this case are the ‘private health benefit programs,’ that is, the insurance companies to which fraudulently inflated insurance claims were made. The writer of the recently filed letter refers to herself as ‘one of Mark Weinberger’s numerous victims’ but the letter does not suggest that she was *defrauded by the health insurance scheme which is the subject of this criminal prosecution.*” (emphasis added)).

Moreover, although you sought an indictment that was returned in this matter, there has been no conviction of any federal offense. Even if Dr. Bajoghli’s patients were “victims” within the meaning of § 3771(e), sending letters to these potential witnesses and informing them that they are “victims” of a crime presupposes the “commission” of a crime. *See* 18 U.S.C. § 3771(e).

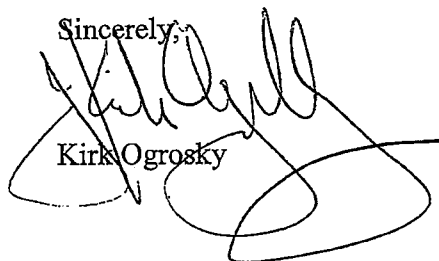
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Finally, if you truly believed that these patients were “victims,” then surely you would have given them the “earliest possible notice” about “the status of the investigation of the crime” several *years* ago, not several *weeks* before trial. *See* 42 U.S.C. § 10607(c)(3). We appreciate and acknowledge that “[o]fficers and employees of the Department of Justice . . . shall make their best efforts to see that crime victims are notified of, and accorded, the rights described” in the Act. 18 U.S.C. § 3771(c)(1). Yet despite having ample opportunity to contact Dr. Bajoghli’s patients during several years of investigation and grand jury proceedings, DOJ is only now sending them letters six weeks before jury selection. Such “notice,” so late in the process, seems plainly designed to taint the witnesses.

We do not believe that there is any cure for these actions and will seek appropriate relief with the Court. Nonetheless, we request that you immediately and personally assure that no further letters go out to any key trial witness, and that you e-mail us a copy of the list of individuals who have received such letters. Thank you.

Sincerely,



Kirk Ogrosky

Attachment

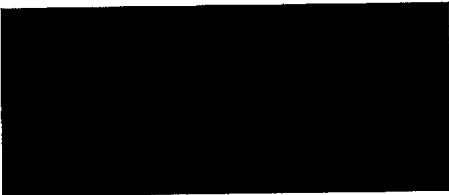
cc: Peter H. White, Esq.

Attachment A



U.S. Department of Justice
Eastern District of Virginia in Alexandria
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: (703) 299-3716
Fax: (703) 299-3980

September 03, 2014



Re: United States v. Defendant(s) Amir Bajoghli
Case Number 2012R01322 and Court Docket Number 14-CR-00278

Dear [REDACTED]

The enclosed information is provided by the United States Department of Justice Victim Notification System (VNS). As a victim witness professional with the United States Attorney's Office, my role is to assist you with information and services during the prosecution of this case. I am contacting you because you were identified by law enforcement as a victim during the investigation of the above criminal case.

Charges have been filed against defendant(s) Amir Bajoghli. The lead prosecutor for this case is Paul Nathanson. The main charge is categorized as Health Care Fraud.

Victims of all crimes under federal investigation are entitled to services under the Victims' Rights and Restitution Act, including notification of court events. For further details, please refer to Title 42 United States Code section 10607 or the brochure posted at <https://www.notify.usdoj.gov>.

Now that charges have been filed in federal court, victims of the charges filed are, in addition, entitled to the following rights, according to the Crime Victims' Rights Act, Title 18 United States Code section 3771: (1) The right to be reasonably protected from the accused; (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused; (3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding; (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding; (5) The reasonable right to confer with the attorney for the Government in the case; (6) The right to full and timely restitution as provided in law; (7) The right to proceedings free from unreasonable delay; and (8) The right to be treated with fairness and with respect for the victim's dignity and privacy.

Please understand that these rights apply only to victims of the counts charged in federal court, and thus you may not be able to exercise all of these rights if the crime of which you are a victim was not charged. In any event, we will continue to provide you with notifications and services unless you tell us not to. We will make our best efforts to ensure you are provided the rights and services to which you are entitled. It is important to keep in mind that the defendant(s) are presumed innocent until proven guilty and that presumption requires both the Court and our office to take certain steps to ensure that justice is served. While our office cannot act as your attorney or provide you with legal advice, you can seek the advice of an attorney with respect to the rights above or other related legal matters.

Additionally, please be aware that most criminal cases are resolved by a plea agreement between the United States Attorney's Office and the defendant. You should also know that it is not unusual for a defendant to seek

to negotiate a plea agreement shortly before a trial is scheduled to begin. Plea agreements can be made at any time and as late as the morning of trial, leaving little or no opportunity to provide notice to you of the date and time of the plea hearing. If the court schedules a plea hearing in this case, we will use our best efforts to notify you of available information as soon as practicable. If you want to inform the prosecutor of your views regarding potential plea agreements, or any other aspect of the case, please contact the prosecutor assigned to this case or me.

An arraignment is scheduled before Judge Gerald Lee on September 10, 2014, 11:00 AM at Alexandria Courtroom 601, Federal Courthouse, 401 Courthouse Sq, Alexandria VA for the case which involves defendant(s) Amir Bajoghli. The main purpose of this hearing is for the defendant to enter a plea to the charges filed in this case. Your attendance is not required. The government expects the defendant to enter a plea of not guilty at this hearing. If the plea is guilty, you will be notified.

Because of the Court's schedule, hearing dates could change on very short notice. If you plan on attending, you may want to call the VNS Call Center or check the website to confirm the date and time. Please note, there is a 24-hour delay in information transfer to the website.

Through the Victim Notification System (VNS) we will continue to provide you with updated scheduling and event information as the case proceeds through the criminal justice system. You may obtain current information about this case on the VNS website at <https://www.notify.usdoj.gov> or from the VNS Call Center at 1-866-DOJ-4YOU (1-866-365-4968) (TDD/TTY: 1-866-228-4619) (International: 1-502-213-2767). In addition, you may use the Call Center or Internet to update your contact information and/or change your decision about participation in the notification program.

For many VNS registrants email will provide the most timely notification. VNS does not currently have an email address for you. You can provide VNS an email address by accessing the VNS Internet Web page using the login information provided below. By entering your email as part of the VNS registration process future notifications will be delivered by email, except in rare circumstances when you might also receive a letter from VNS. In order to continue to receive notifications, it is your responsibility to keep your contact information current.

You will use your Victim Identification Number (VIN) [REDACTED] and Personal Identification Number (PIN) [REDACTED] anytime you contact the Call Center and the first time you log into VNS on the website. If you are receiving notifications with multiple victim ID/PIN codes please contact the VNS Call Center. In addition, the first time you access the VNS website, you will be prompted to enter your last name (or business name) as currently contained in VNS. The name you should enter is [REDACTED]

Remember, VNS is an automated system and cannot answer questions. If you have other questions which involve this matter, please contact this office at the number listed above.

Sincerely,

Angela Clement
LECC/Victim Witness Coordinator